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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 UNITED STATES OF AMERICA,

4 v.

07 CR 711 (LAP)

5 NADEEM KHAN,

6 Defendant.  
-----x

8 New York, N.Y.  
9 July 31, 2008  
10:30 a.m.

10 Before:

11 HON. THEODORE H. KATZ,

12 Magistrate Judge

13  
14 APPEARANCES

15 MICHAEL J. GARCIA  
16 United States Attorney for the  
17 Southern District of New York  
18 LISA ZORNBERG  
19 Assistant United States Attorney

20 LARRY SHEEHAN  
21 Attorney for Defendant  
22  
23  
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1 (In open court)

2 THE DEPUTY CLERK: United States v. Khan. Counsel,  
3 identify yourself for the record.

4 MS. ZORNBERG: Good morning, your Honor. Lisa  
5 Zornberg and Meryl Lutsky for the government.

6 MR. SHEEHAN: Larry Sheehan for Mr. Khan.

7 THE COURT: Hi. How are you. This matter was  
8 referred by Judge Preska. And Mr. Khan is here to enter a plea  
9 of guilty.

10 MR. SHEEHAN: He is, your Honor.

11 THE COURT: Mr. Khan, count one in the indictment in  
12 your case charges you with conspiring to commit identification  
13 document fraud in violation of Title 18 of the United States  
14 Code, Section 1028(f).

15 That offense carries a maximum sentence of 15 years in  
16 prison, a maximum term of three years on supervised release, a  
17 maximum fine of \$250,000 or twice the monetary gain or loss  
18 resulting from the offense, whichever is greater, and a  
19 mandatory special assessment of \$100. You would also be  
20 subject to an order of restitution. And if you are sentenced  
21 to time on supervised release, and were to violate the terms of  
22 your supervised release, you could then be sentenced to  
23 additional time in prison.

24 You have the right to plead not guilty to this charge.  
25 And if you do so, you have the right to a jury trial. If

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1 convicted, you have the right to be sentenced by a United  
2 States district judge. If you choose to, however, you can  
3 enter a plea of guilty to the charge, and if you consent, you  
4 can enter your plea before me. I am a United States magistrate  
5 judge. If I were to determine that your plea was entered  
6 knowingly and voluntarily and that there is a factual basis for  
7 your plea, I would then recommend to Judge Preska that she  
8 accept your plea of guilty. And if she does so, your  
9 sentencing would take place before her.

10 Do you understand what I've just explained?

11 THE DEFENDANT: Yes, sir, I understand.

12 THE COURT: Have you read and signed this form  
13 consenting to enter your plea before a United States magistrate  
14 judge?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: I've accepted the consent.

17 Mr. Khan, before I can accept your plea, I have to  
18 give you some information and ask you certain questions so I  
19 can be assured that you understand the rights you are giving up  
20 by pleading guilty, and that your plea is entered voluntarily  
21 and of your own will, and there is a factual basis for your  
22 plea. The answers to my questions are to be given under oath.  
23 That means you could be prosecuted for perjury if you give  
24 false statements. Do you understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: Would you raise your right hand.

2 (Defendant sworn)

3 THE COURT: Would you state your full name.

4 THE DEFENDANT: My name is Nadeem Khan.

5 THE COURT: How old are you?

6 THE DEFENDANT: I'm 24.

7 THE COURT: How much education have you had?

8 THE DEFENDANT: I got bachelor in my country, and  
9 certification from Microsoft MCSE and MCSA.

10 THE COURT: Sit down and get a little closer to the  
11 microphone. You can sit if you get closer to the mic.

12 Are you presently under the care of a doctor or  
13 psychiatrist?

14 THE DEFENDANT: No, sir.

15 THE COURT: Are you taking any kind of medication?

16 THE DEFENDANT: No, sir.

17 THE COURT: Have you ever been treated for alcoholism  
18 or drug addiction?

19 THE DEFENDANT: No, sir.

20 THE COURT: Are you feeling physically all right as  
21 you sit here today?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Have you been able to understand  
24 everything I've said so far?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: Have you seen a copy of the indictment in  
2 your case?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Have you read it or would you like me to  
5 read it to you?

6 THE DEFENDANT: I read it already, sir.

7 THE COURT: Do you understand what it says you did?

8 THE DEFENDANT: Yes, sir, I completely understand.

9 THE COURT: Have you had a chance to discuss the  
10 charges in the indictment with Mr. Sheehan and how you wish to  
11 plead today?

12 THE DEFENDANT: Yes, sir, I do.

13 THE COURT: Are you satisfied with Mr. Sheehan's  
14 services?

15 THE DEFENDANT: Yes, sir, very well.

16 THE COURT: Are you prepared to enter a plea to count  
17 one in the indictment?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: What plea do you wish to enter?

20 THE DEFENDANT: Well, I place charged --

21 THE COURT: Just guilty or not guilty?

22 THE DEFENDANT: Yes, sir. Guilty.

23 THE COURT: Do you understand you have the right to  
24 plead not guilty to this charge, and if you do so, you have the  
25 right to a jury trial?

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1 THE DEFENDANT: No, I want to plead guilty now.

2 THE COURT: I understand what you want to do. But as  
3 I said to you, I have to make sure that you understand what  
4 rights you are giving up by pleading guilty. So, listen to my  
5 questions and let me know your answer.

6 Do you know if you plead guilty you -- plead not  
7 guilty you have the right to a jury trial?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand that if you chose to go  
10 to trial, the burden would be on the government to prove your  
11 guilt beyond a reasonable doubt?

12 THE DEFENDANT: I understand that.

13 THE COURT: Do you understand that if you chose to go  
14 to trial, you would be presumed innocent unless and until the  
15 government did prove your guilt beyond a reasonable doubt?

16 THE DEFENDANT: I understand that too.

17 THE COURT: Do you understand that if you chose to go  
18 to trial, you would have the right to be represented by an  
19 attorney, and if necessary, an attorney would be appointed to  
20 represent you?

21 THE DEFENDANT: I understand.

22 THE COURT: Do you understand that at a trial your  
23 attorney would have the right to cross-examine any witnesses  
24 who were called to testify against you?

25 THE DEFENDANT: I understand that.

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1 THE COURT: Do you understand that at a trial you  
2 would have the right to call witnesses to testify in your  
3 behalf?

4 THE DEFENDANT: I understand that too.

5 THE COURT: Do you understand that at a trial you  
6 would have the right to testify yourself, but you would not be  
7 required to testify or to incriminate yourself in any fashion?

8 THE DEFENDANT: I understand that too.

9 THE COURT: Do you understand that if you plead guilty  
10 to this charge today, there will be no trial, and the next  
11 stage in this proceeding would be your sentencing by Judge  
12 Preska?

13 THE DEFENDANT: Yes, sir, I understand that too.

14 THE COURT: Okay. You heard me describe what the  
15 maximum statutory penalties are for the offense in count one.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Have you had a chance to speak to  
18 Mr. Sheehan about how the United States sentencing guidelines  
19 apply to your case?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that although Judge  
22 Preska is obligated to consider the United States sentencing  
23 guidelines in determining what a reasonable sentence would be  
24 in your case, she's not obligated to actually sentence you  
25 under the guidelines?



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1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand that under certain  
3 circumstances, Judge Preska has the discretion to impose a  
4 sentence that is even more severe or more lenient than is  
5 called for in the sentencing guidelines?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand that the sentence to be  
8 imposed lies solely in Judge Preska's discretion?

9 THE DEFENDANT: I understand.

10 THE COURT: Have any threats been made to you by  
11 anyone which are causing you to plead guilty today?

12 THE DEFENDANT: No, sir.

13 THE COURT: Have any promises been made to you about  
14 the sentence you will receive?

15 THE DEFENDANT: No, sir.

16 THE COURT: Did you enter into a plea agreement with  
17 the government?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Have you read and signed the agreement?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand what it says?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Ms. Zornberg, would you outline the more  
24 significant terms of the agreement.

25 MS. ZORNBERG: Certainly, your Honor. The plea



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1 agreement provides that the defendant will plead guilty to  
2 count one of the indictment. In return for his plea, the  
3 government will agree at sentencing to dismiss all of the other  
4 open counts against him.

5 The plea agreement also contains a sentencing  
6 guidelines calculation, which is what the parties both agree at  
7 this time are the applicable sentencing guidelines. Under  
8 those guidelines, the defendant's sentencing range is 46 to 57  
9 months, based on an offense level of 23 and a criminal history  
10 category of I.

11 The plea agreement also contains an appellate waiver  
12 provision where the defendant agrees to give up his right to  
13 appeal any sentence that is within or below the stipulated  
14 guidelines range. He also waives the right to DNA testing.

15 Your Honor, I believe those are the most salient  
16 provisions of the plea agreement.

17 THE COURT: Is that consistent with your  
18 understanding, Mr. Sheehan?

19 MR. SHEEHAN: It is.

20 THE COURT: You understand the agreement?

21 THE DEFENDANT: I do.

22 THE COURT: Do you understand that although you've  
23 reached an understanding with the government about the  
24 potential sentence you face, 46 to 57 months in prison, that  
25 that's not binding on Judge Preska, and that the sentence to be

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1 imposed lies solely in her discretion?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand that even if Judge  
4 Preska were to impose a sentence that's greater than 57 months  
5 in prison, that would not be a basis for you to withdraw your  
6 plea of guilty?

7 THE DEFENDANT: Yes, I understand that.

8 THE COURT: Do you understand that so long as Judge  
9 Preska does not impose a sentence that is greater than 57  
10 months in prison, you're giving up your right to appeal such  
11 sentence?

12 THE DEFENDANT: Yes, sir, I understand.

13 THE COURT: Do you still wish to plead guilty to count  
14 one in the indictment?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Is your plea made voluntarily and of your  
17 own will?

18 THE DEFENDANT: Can I talk --

19 (Pause)

20 THE DEFENDANT: No, sir. It's voluntary.

21 THE COURT: Are you giving a guilty plea voluntarily  
22 and of your own will?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Did you commit the offense set forth in  
25 count one of the indictment?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: Ms. Zornberg, will you outline the  
3 elements of the offense that the government would have to prove  
4 should Mr. Khan go to trial with respect to count one.

5 MS. ZORNBERG: Yes. Your Honor, the defendant is  
6 charged with conspiracy to commit identification document fraud  
7 under 18 U.S.C. Section 1028(f).

8 Under that statutory provision, the government would  
9 have to prove at trial: First, that the defendant was a party  
10 to a conspiracy of two or more persons to commit an offense  
11 under Title 1028, and secondly, that an act in furtherance of  
12 that conspiracy occurred somewhere in the Southern District of  
13 New York.

14 The particular count, one, charges that the objects of  
15 the conspiracy at issue were to violate two subsections of  
16 Title 1028. First, the producing of false identification  
17 documents in violation of 1028(a)(1), and second, the  
18 transferring, possession and use of false means of  
19 identification to commit, aid or abet the other crimes in  
20 violation of 1028(a)(7).

21 And your Honor, I'll just briefly review what the  
22 underlying elements of those objects are. Producing a false  
23 identification document involves the following elements: That  
24 a document is a false identification document, that the  
25 defendant produced it, that the defendant produced it knowingly

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1 and without lawful authority, and fourth, that the defendant's  
2 conduct was either affecting interstate commerce or that the  
3 false ID was transported in the U.S. mails or that the false ID  
4 appeared to be issued under the authority of the U.S.  
5 government.

6 And the underlying elements of the second object of  
7 the conspiracy, which is transferring a false identification  
8 with intent to commit another crime, are the following: One,  
9 that the item is the means of identification of another person,  
10 second, that it was used or transferred or possessed by the  
11 defendant, third, that the defendant acted knowingly and  
12 without lawful authority, fourth, intent to commit an unlawful  
13 activity that violates federal or state law, and fifth, that  
14 the defendant's conduct was in or affecting interstate  
15 commerce.

16 Your Honor, the count one -- I think that's it for the  
17 conspiracy.

18 THE COURT: Okay. Mr. Khan, can you now tell me in  
19 your own words what you did that's causing you to plead guilty  
20 to the charge in count one.

21 THE DEFENDANT: Well, on 2nd June, 2007, well, I made  
22 two IDs and New York driver's licenses to give it to Mamoud,  
23 and I knew it going to be affected to financial institute to  
24 \$400,000. So that's it.

25 THE COURT: Between January of 2005 and January of --

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1 or August of 2007, you agreed with other people to create false  
2 documents?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And then those documents then were given  
5 to someone?

6 THE DEFENDANT: Yes, sir. Mamoud.

7 THE COURT: Was -- and the documents were then used,  
8 was that to take out bank loans?

9 THE DEFENDANT: No. It was out of the New York State,  
10 another state.

11 THE COURT: I am not sure. Say that again.

12 THE DEFENDANT: No. The documents IDs is from the  
13 State of New York for a different state.

14 THE COURT: So false identification documents?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And --

17 MS. ZORNBERG: Your Honor, perhaps you could ask the  
18 defendant if he knew that the false identification documents  
19 were going to be used to do things like obtain credit cards and  
20 fake names and conduct financial transactions.

21 THE COURT: Did you know the cards would then be used  
22 to obtain loans and conduct financial transactions?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Did the documents that you created, false  
25 documents, include things such as driver's licenses?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: Were any Social Security cards?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Anything else you'd like me to ask?

5 MS. ZORNBERG: Your Honor, just one question. Well,  
6 first of all, the government would proffer that as to venue,  
7 that we would show that the defendant's conduct took place as  
8 part of a larger ring, and numerous acts by the ring occurred  
9 in the Southern District of New York.

10 In terms of questioning the defendant, I would ask the  
11 Court just to advise the defendant that since he's not a  
12 citizen, that his plea may or will have effect.

13 THE COURT: What country are you a citizen?

14 THE DEFENDANT: I'm from Pakistan.

15 THE COURT: Do you understand by pleading guilty, in  
16 addition to any sentence you will receive by the Court, once  
17 you finish your sentence there will be immigration  
18 consequences?

19 THE DEFENDANT: Yes, I understand.

20 THE COURT: Are you still willing to plead guilty  
21 knowing that?

22 THE DEFENDANT: Yes, sir.

23 MS. ZORNBERG: We think that's sufficient.

24 THE COURT: Ms. Zornberg, do you know of any reason  
25 why Mr. Khan should not plead guilty?

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1 MS. ZORNBERG: No, we do not.

2 THE COURT: Do you, Mr. Sheehan?

3 MR. SHEEHAN: I do not, your Honor.

4 THE COURT: I am satisfied that Mr. Khan is competent  
5 to enter a plea of guilty. I am satisfied that Mr. Khan  
6 understands the nature of the charge against him and the  
7 consequences of his plea of guilty. I'm satisfied that your  
8 plea is made voluntarily and of your own will and that there is  
9 a factual basis for your plea.

10 I am going to therefore recommend to Judge Preska that  
11 she accept your plea of guilty to count one in the indictment.

12 Has Judge Preska set a sentencing date?

13 MS. ZORNBERG: She has not, your Honor. We would  
14 request a control date three months out, and the parties will  
15 get an exact date from the judge.

16 THE COURT: That would be October 30. And you'll make  
17 sure you get the memo to pretrial, probation.

18 Between now and when you are sentenced, Mr. Khan, you  
19 are going to meet with the staff of the probation department so  
20 they can prepare a presentence report for Judge Preska.  
21 Mr. Sheehan has the right to be present at the interview and  
22 you'll receive a copy of that report as well.

23 Anything else?

24 MS. ZORNBERG: No, your Honor.

25 MR. SHEEHAN: Thank you.

*The plea is accepted*  
**SO ORDERED**

*Loretta A. Preska*  
**LORETTA A. PRESKA**

**UNITED STATES DISTRICT JUDGE**

*September 11, 2008*

SOUTHERN DISTRICT REPORTERS, P.C.

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